Sprint Nextel Corporation
6450 Sprint Parkway
Overland Park, KS 66251
Office: (913) 315-8521
scott.r.freiermuth@sprint.com

Scott R. Freiermuth
Counsel, Government Affairs

April 29, 2011

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

> **Re:** *Notice of Ex Parte Communication*
> CG Docket 09-158, Consumer Information and Disclosure

Dear Ms. Dortch:

Sprint Nextel Corporation ("Sprint") submits this letter in response to questions from the Consumer and Government Affairs Bureau. The questions concern Sprint's policies and practices with respect to third-party charges and billing:

1) Sprint's review of cramming complaints and trends:

Instances of cramming have dropped significantly since customers first began using mobile phones to make third-party purchases as carriers have put into place procedures to safeguard consumers.

Nearly all third-party charges appearing on Sprint invoices are in relation to the purchase of premium short message services ("PSMS") such as alerts, ringtones, games, screen savers and applications. The ecosystem for these purchases involves typically four parties: 1) the mobile service provider (*i.e.,* Sprint); 2) the PSMS aggregator; 3) the third-party content provider (*e.g.,* joke-of-the-day); and 4) the customer who purchases the content. This ecosystem has matured markedly over the years in an effort to combat instances of cramming and, more generally, to ensure that customers have a positive PSMS experience with reputable businesses.

Mobile service providers and industry organizations including CTIA and the Mobile Marketing Association ("MMA") (a member organization comprised of all parties within the ecosystem) have developed guidelines to ensure consumers have a consistent and positive experience when purchasing premium services. As stated in the MMA's U.S. Consumer Best Practices guidelines:

> While the MMA CBP committee strives to implement policies that encourage the growth of the off-net industry, the primary focus is on

consumer protection and privacy, as industry growth without con-
sumer satisfaction is not sustainable.[1]

At the heart of these guidelines and the consumer protection mandate are the principles of
disclosure and consent. In theory, a well-informed consumer performing a double opt-in
authorization (required for all PSMS) should not be surprised when receiving a third-
party charge on his or her bill. As such, the guidelines provide a template for a satisfac-
tory consumer experience. And the aggregators, the mobile service providers (and their
auditors) closely monitor campaigns to ensure that the content providers adhere to this
template.

With respect to disclosure, both the MMA and Sprint's independent guidelines dictate the
information a consumer should receive including, for example: the identity of the pro-
gram sponsor, the frequency of messaging (*e.g.,* "Get 10 msgs/month"), pricing terms for
the program (*e.g.,* "$5.99/mo for daily info, 7 per week"), customer service contact in-
formation (toll-free number or email address), instructions for HELP, and instructions for
STOP (opting-out). Sprint considers this information to be essential, and (as described
below in Sprint's response to the third question) Sprint will take remedial action if it
finds, through proactive monitoring of third-party campaigns, that such basic disclosure
information is lacking from a campaign.

With respect to consent, per MMA and Sprint's own independent guidelines, *all premium
short messaging service (PSMS) programs require a double opt-in*. The typical process
flow involves the consumer seeing an advertisement for a PSMS program (containing
disclosures as described above) and taking a first step of authorization by initiating con-
tact with the content provider. The content provider will then respond seeking the cus-
tomer's second authorization (again this message contains disclosure and pricing infor-
mation). This second authorization typically involves the content provider sending a text
message to the consumer's mobile phone in which the consumer is asked to respond with
a message indicating acceptance of the terms of service with pricing terms prominently
displayed. MMA requirements also require a confirmation message containing HELP
and STOP information ensuring that the consumer is in control of their authorization and
is aware of the ability to opt-out of the campaign at any time. Sprint will immediately
take down any PSMS program found to be out of compliance with this basic double opt-
in requirement.

Again, the steps taken by members of the PSMS ecosystem have had a substantial, posi-
tive impact in taming the PSMS environment. These steps, while not completely obviat-
ing consumer inquiry or disputes related to third-party charges appearing on Sprint's
bills, have made PSMS a more uniform, more consistent consumer experience. The vol-
ume of PSMS campaigns continue to grow as do the customer calls in relation to these

---

[1]   *See*, MMA U.S. Consumer Best Practices at p. 6, available at
http://mmaglobal.com/Consumer%20Best%20Practices%206%200-08Mar2011FINAL.pdf

campaigns, but there is no discernible trend as the number of calls to Sprint care and the number of refunds granted tend to fluctuate month-by-month. Furthermore, the calls/refunds tracked do not necessarily indicate incidents of cramming or any a violation of Sprint/MMA guidelines (*e.g.,* a customer may have performed the double opt-in on a fully compliant MMA campaign, but the customer may still contact Sprint customer care and receive a refund). With respect to true, unauthorized third-party charges on invoices, Sprint rarely finds instances where the customer did not proactively complete both steps within the double opt-in process. There will always be challenges in this space as there are thousands upon thousands of campaigns running on mobile service providers' networks, but the industry guidelines and structure coupled with enforcement have clearly had a positive impact on the ecosystem and consumer experience.

2) **Sprint's billing practices (how third-party charges and contact information are formatted, inclusion of FCC complaint contact information):**

Attached is a monthly invoice demonstrating how third-party charges are formatted (see page 4). With regard to contact information, Sprint has chosen to display only its contact information (see, first page of attached bill). Sprint believes it is best equipped to handle inquiries related to third-party charges including providing credits or adjustments should a customer dispute a third-party charge. Finally, Sprint does not display FCC complaint contact information.

3) **Sprint's due diligence in allowing particular third parties to place charges on Sprint bills:**

Several years ago, Sprint implemented an innovative approach to better manage the PSMS ecosystem. Recognizing that Sprint does not have direct control over content providers, Sprint instead created a system of financial reward and financial penalties through its contracts with messaging aggregators. Sprint's experience is that this reward/penalty system influences aggregators to work only with reputable content providers and to ferret out non-compliant campaigns.

The incentive/penalty system takes into account MMA compliance, refund rates, and billing incidents. Basically, if the content providers with whom an aggregator works demonstrate compliance with MMA U.S. Consumer Best Practices and Sprint's own independent guidelines, the aggregator will be rewarded with a higher revenue share from Sprint. In contrast, if Sprint finds multiple infractions, the aggregators revenue share drops considerably. This, in turn, places pressure on the aggregator to ensure that their clients (the content providers) are running campaigns compliant with Sprint and MMA guidelines.

Similarly, if there is a low refund rate for campaigns run through an aggregator, the aggregator is eligible for the revenue share rewards. If, on the other hand, the refund rate is high, the aggregator is assessed a revenue penalty.

Sprint also takes into account billing incidents. If Sprint discovers a billing incident that should have been know/reported by an aggregator, then the aggregator is responsible for

the ensuing refund plus a hefty penalty. The penalty is less if the aggregator reports the billing incident to Sprint within five days, and the penalty is greater if the aggregator reports the incident after 5 days.

Finally, Sprint monitors aggregators' and content providers' histories and will take remedial action as necessary and appropriate. For example, Sprint has refused to on-board campaigns from particular aggregators/content providers that have a poor track record (*e.g.,* numerous MMA non-compliant incidents, high refund rate, numerous billing incidents, *etc.*). And, Sprint has shut down particular short codes or PSMS campaigns that are fraudulent, deceptive, or otherwise non-compliant with Sprint or MMA guidelines. And to repeat, Sprint will immediately take down any PSMS campaign that does not comply with the double opt-in requirement.

4) Blocking options for Sprint subscribers:

Sprint provides its customer – free of charge – the ability to block third-party purchases. As stated on Sprint's "Parental Controls" webpage[2]:

> **Block digital media downloads**
>
> Sign in and block digital media downloads to prevent a phones primary user from buying and downloading games, ringtones, screensavers or other content.
>
> This feature is managed online through My Sprint.

A customer may also request the placement of such a digital media block by calling Sprint customer care or using Sprint's e-chat customer care. Furthermore, Sprint customer care representatives can block text messages from individual content providers or individual short codes.

---

[2] http://shop2.sprint.com/en/services/safety_security/parental_control.shtml

5) Sprint's procedures for considering subscribers' objections to billed charges as unauthorized:

Sprint has instituted a consumer-friendly approach to its customer disputes of third-party charges. If a customer calls to dispute a charge, the Sprint representative will obtain basic information about the disputed charge. The Sprint representative will then educate the customer about the charge in question, describing the double opt-in process (and, Sprint representatives have the ability to provide date/time of the customer authorization). Sprint representatives will also inform customers on how they can opt-out in the future (*e.g.,* text "Stop") and how a customer may block various types of messages including how to block PSMS/digital media downloads (see, response to question four above). After educating the customer, the Sprint representative will inform the customer that they will continue to incur charges unless the customer chooses to opt-out of the particular campaign or block the text messages from that short code. The Sprint representative also will ask whether the customer is seeking a credit. If the customer does seek a credit, then the customer is opted-out automatically from the disputed campaign.

Sprint monitors the number of times that a customer calls to dispute PSMS charges. Sprint generally will issue credits twice per short code and deny a third requested credit on a short code. With the automatic opt-out upon credit issuance for the first two credits, this would mean that a customer has double opted-in three different times to the same short code.

Finally, with respect to the issuance of a credit, if the customer has already paid his or her bill, then Sprint will issue a credit on the next invoice. If the customer has not paid his or her bill, then Sprint will adjust the balance due and inform customer of new amount due.

*   *   *

If you have any questions or concerns regarding this information, please contact the undersigned.

Sincerely,

/s/ Scott R. Freiermuth

cc: William Freedman
        Nancy Stevenson
        Mark Stone
        Colleen Heitkamp
        Kurt Schroeder